DRAFT 5/2/2006

DRA--RESOURCES

0380.10 RESOURCE DEFINITIONS

REV:**07/2006**

A RESOURCE is either real or personal property which the applicant/recipient can use (either directly or by sale or conversion) to provide for his/her basic needs for food, clothing, shelter or medical care. Third Party Resources for medical care, such as health insurance, are not countable resources in eligibility determinations.

- o REAL PROPERTY is land and generally whatever is erected or growing upon or attached to land. Real property also includes any interest in land. Examples of real property and interests in land include a lot with or without a house, a life estate, a remainder estate, mineral rights, easements, and leaseholds;

- o PERSONAL PROPERTY in a broad sense is everything that is subject to ownership that is not real property. It includes tangible and intangible personal property.

  - TANGIBLE PERSONAL PROPERTY includes movable and tangible things such as animals, furniture, automobiles, jewelry, boats, and merchandise.

- INTANGIBLE PERSONAL PROPERTY includes such rights as stock, bonds, savings accounts, checking accounts, certificates or deposit, cash, and promissory notes.

Resources are further defined based upon whether they are countable or excluded in the process of determining eligibility for Medical Assistance.

- o COUNTABLE RESOURCE: A resource, whether real or personal property, that is counted toward a resource limit. Countable resources are available to the recipient, and are not excluded;

- o EXCLUDED RESOURCE: A resource that is not counted toward the resource limit because of a specific exclusion in policy. Some resources are totally excluded regardless of value (e.g. ~~the home of a recipient, or~~ an automobile used for transportation for medical care); some resources are excluded to the extent they do not exceed a specific threshold amount (e.g. **a certain amount of the equity of the home of a recipient,** life insurance face value limit). See Section 0382, EVALUATION OF RESOURCES.

Other definitions pertaining to the evaluation of an institutionalized individual's countable resources are set forth below.

TOTAL JOINT RESOURCES is the combined resources of the community spouse and the institutionalized spouse, to the extent that either has an ownership interest in the resources. Total joint resources are normally calculated at two points in the eligibility determination process - 1) Advance Determination when the institutionalized spouse begins a continuous period of institutionalization, and 2) at the time of application for MA (total joint resources as they exist on the first day of the month for which eligibility is being determined).

SPOUSAL SHARE is one-half (1/2) of the couple's Total Joint Resources computed as of the beginning of a continuous period of institutionalization. The spousal share remains fixed until the institutionalized spouse is determined eligible for MA, regardless of any changes in the resources of the institutionalized spouse or the community spouse. At the time of MA eligibility determination, the spousal share is used as one component in the calculation of the community spouse resource allowance.

COMMUNITY SPOUSE RESOURCE ALLOWANCE is the amount of a couple's total joint resources which is attributed to the community spouse at the time Medical Assistance eligibility is determined for the institutionalized spouse.

A RESOURCE TRANSFER is the conveyance of right, title, or interest in either real or personal property from one person to another.

The conveyance may be by sale, gift, or other process.

COMPENSATION/CONSIDERATION is all real and/or personal property, or any other right or item of value that is received by an applicant/recipient pursuant to a binding contract in exchange for a resource. The recipient may receive the consideration or compensation prior to, at the time of, or after the transfer.

Items of value that serve as consideration or compensation include money, food, shelter, services, stocks, bonds, etc.

FAIR MARKET VALUE (FMV) of property (real and personal) is the amount for which the property can be expected to sell on the open market in the geographic area involved and under existing economic conditions at the time of the determination.

EQUITY VALUE is the FMV less the amount of any legal encumbrances.

UNCOMPENSATED VALUE (UV) is the equity value of a transferred resource minus the amount of compensation/consideration received by the applicant/recipient in exchange for the resource.

THE HOME is an individual's principle place of residence. An individual may possess many houses but only one home.

0380.35 EXCLUDED RESOURCES

REV:**07/2006**

In determining eligibility for both Categorically Needy and Medically Needy Medical Assistance for an institutionalized individual, the following resources, subject to certain rules discussed in Section 0382, EVALUATION OF RESOURCES, are EXCLUDED:

- THE HOME AND ASSOCIATED LAND **up to an equity value as set forth in section 0382.10.05**;
- HOUSEHOLD GOODS AND PERSONAL EFFECTS, regardless of value;
- ONE AUTOMOBILE, regardless of value;
- LIFE INSURANCE with a face value less than $1,500 for Categorically Needy, less than $4,000 for Medically Needy;
- BURIAL SPACES;
- IRREVOCABLE BURIAL CONTRACTS OR TRUSTS;
- FUNDS SET ASIDE FOR BURIAL, up to a maximum of $1,500;
- RETROACTIVE RSDI AND SSI BENEFITS, for a limited period;
- RESOURCES NECESSARY FOR SELF EMPLOYMENT;
- RESOURCES DESIGNATED BY SSA FOR A PLAN OF SELF SUPPORT

for a blind or disabled individual;

- RESOURCES EXCLUDED BY SPECIFIC STATUTES.

0382.10 REAL ESTATE

REV:07/2006

The policies and procedures set forth in the following sections will be used to determine Medical Assistance eligibility and Medical Assistance payments for services to INSTITUTIONALIZED INDIVIDUALS.

The equity value of real property owned by an individual that is neither excluded **(up to a certain amount)** as the home nor determined unavailable is a countable resource.

Real property may consist of land, buildings, and objects permanently attached to the land, (including "mobile" homes permanently sited). Real property includes the value of certain interests in real estate such as life estates, mineral rights, easements, life leaseholds.

0382.10.05 Home and Associated Land Excl

REV:07/2006

Effective March 1, 2004, DHS policy is revised to clarify application of the home exclusion for residential real estate property.

Definitions

For the purposes of this section, the following definitions apply:

--APPLICANT: New applicants for Medical Assistance as well as current recipients at any point in which eligibility is redetermined.

--DEPENDENT CHILD: An unmarried child of the applicant and/or the applicant's spouse who is dependent upon the applicant and/or the spouse for financial support, and is either under eighteen (18) years of age; or over eighteen (18) years of age and living with a disability which began before age twenty-two (22).

--HOME: Any residential property in which the applicant and/or applicant's spouse possess an ownership interest that also serves as the principal place of residence of the applicant and/or, in the instances specified in this section, the applicant's spouse or dependent child. A home may be a fixed or mobile residential property. A cooperative or condominium apartment, townhouse, mobile house, and houseboat are all examples of residential properties that may serve as homes. An applicant and spouse may have an ownership interest in several residential properties, but only one (1) shall be considered a home for the purposes of this section.

--HOME EXCLUSION: The treatment of a residential property as a non-countable resource when the property serves as the home of an applicant/spouse as specified in this section. Regardless of whether one or both spouses in the household are applicants, only one residential property is considered to be a home, and as such, is treated as an excluded resource for the purposes of determining MA eligibility.

--INTENT TO RETURN: An expression indicating that it is the applicant's plan to live in the home used as the principal place of residence after a temporary absence. The intent to return home is subjective rather than objective and, as such, must be expressed by the applicant or an authorized representative of the applicant in the form of a signed, written statement.

--OWNERSHIP INTEREST: The individual holds sole or joint legal title to the residential property or is a party to a legal covenant establishing property ownership, such as a life estate.

--PRINCIPAL PLACE OF RESIDENCE: The residential property where the applicant, and/or in the instances specified in this section, a spouse or a dependent child lives the majority of the time during the year. For example, one hundred and eighty-three (183) days in the previous twelve (12) months.

--RESIDENT OF RHODE ISLAND: The applicant has an intent to stay in the state permanently or for an indefinite period, in accordance with the provisions set forth in Section 0106.05 through 0106.25 of the DHS Code of Administrative Rules.

--TEMPORARY ABSENCE: A limited period of time in which the applicant is residing away from home for reasons essential to personal welfare (e.g. protective or rehabilitative services), related to medical or social needs (e.g. hospitalization or nursing home care), or over which the applicant has no direct control.

Application of the Home Exclusion

For applications and recertifications after January 1, 2006, t ~~T~~he home of an institutionalized applicant is an excluded resource, if it is located in Rhode Island, **if the equity value of the home is less than five hundred thousand dollars ($500,000.00)**and the applicant expresses an intent to return to the home. If the applicant does not maintain a

Rhode Island home, the home exclusion applies to the principal place of residence of the community spouse or a dependent child.

For applications and recertifications after January 1, 2006, in the case of a life estate, the equity value of the life estate of an institutionalized applicant is an excluded resource if the equity value of the life estate is less than five hundred thousand dollars ($500,000.00), the home must be located in Rhode Island, and the applicant expresses an intent to return to the home.

The value of any land/building contiguous to the home is also excluded.

0382.15.10.40 Rebuttal Procedures

REV:07/2006

When a joint account is alleged or discovered during the applicant process, the agency representative explains the applicable ownership presumption to the applicants or deemors.

If the applicant disagrees with the presumption of ownership, the agency representative provides an explanation of the rebuttal procedure. If the individual chooses not to rebut the presumption of ownership, the resource determination proceeds in the usual manner.

If the individual wishes to rebut the presumption, the agency representative explains to the individual that all of the necessary rebuttal evidence must be submitted within thirty days.

An additional thirty day period is granted if the applicant establishes good cause for his or her inability to provide the necessary documentation within the initial thirty day period.

IF the required information is not provided, the presumption of ownership issued to determine the value of resources.

Once the rebuttal evidence is submitted, the Resource Unit at the DHS Central office determines who owns the funds in the joint account and documents the findings for the record.

If the applicant is ineligible due to any other factor of eligibility (such as excess income) or if a successful rebuttal would not change a determination of ineligibility due to other excess resources, it would then be ~~necessary~~ **unnecessary** to initiate the rebuttal procedure.

0382.15.20.10 Valuation

REV:07/2006

Once negotiability is established, the instrument is considered a resource in the amount of the outstanding principal balance, unless the ~~individual can furnish evidence from a reliable source which shows that the instrument is worth a lesser amount. Reliable sources include banks, other financial institutions, real estate brokers, private investors, etc.~~ **promissory note, loan, or mortgage: (1) has a repayment term that is actuarially sound; (2) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and (3) prohibits the cancellation of the balance upon the death of the lender.**

In the case of a promissory note, loan, or mortgage that does not satisfy the three requirements, the value of such document shall be the outstanding balance due as of the date of the individual's application for medical assistance long term care services.

Instruments that do not meet this criteria need to be examined under the transfer of resource policies found at section 0384.

0382.15.35 Annuities

REV:07/2006

An annuity is an investment of funds from which an individual is paid or promised regular payments over a lifetime or a fixed period of time. Generally an annuity is established with a lump sum of money which is paid to a bank, insurance company, or other entity.

A deferred annuity is one under which payments begin at some date to be specified in the future. Once an individual selects a periodic payment option (frequency, amount and duration of payments), the annuity has been annuitized.

An annuity may guarantee periodic payments for a stated period (termed period certain) or guarantee periodic payments for the remainder of the life of the individual, without regard to how long the individual lives (termed life annuity).

All applicants must disclose any interest in an annuity that the applicant or his/her spouse has at the time of application and/or recertification of eligibility. Under 42 U.S.C. 1396p(e), as amended by the Deficit Reduction Act, the State becomes a remainder beneficiary of a recipient's annuity (or other similar financial document) purchased or transacted on or after February 8, 2006 by virtue of the provision of such medical assistance up to the amount of medical assistance paid on behalf of the individual.

When determining eligibility for MA, COUNT AS AN AVAILABLE RESOURCE:

> The cash value of an annuity which can be surrendered or "cashed in." The cash value is equal to the amount of money used to establish the annuity, plus any earnings, minus any earlier withdrawals and surrender fees. No consideration in determining cash value is given for income tax withheld or

tax penalties for early withdrawal.

Annuity contracts that do not allow for cash surrender but instead allow the owner to sell the annuity on the open market are assignable. Annuity contracts that are silent regarding assignability are presumed to be assignable. Assignable annuities are countable resources. The countable value of the resource is equal to the outstanding principal balance, unless the individual can furnish evidence from a reliable source which shows that the annuity is worth a lesser amount. Reliable sources include banks, other financial institutions, insurance companies, brokers, viatical settlement companies, etc.

COUNT AS AVAILABLE INCOME:

Payments made to the individual from an annuity are counted as unearned income. **Any change in the income from the annuity must be reported within ten (10) days to the agency and may affect eligibility and/or post eligibility treatment of income.**

TRANSFER OF ASSET PROVISIONS FOR INSTITUTIONALIZED INDIVIDUALS MAY APPLY WHEN:

A non-cashable, non-assignable annuity was purchased by the individual (or the individual's spouse) within thirty-six (36) months (**if done so prior to February 8, 2006) or within sixty (60) months (if done on or after February 8, 2006)**immediately prior to or anytime after the date the individual was both institutionalized and applied for MA. In this case, a determination must be made as to whether its purchase constitutes a transfer of assets for less than fair market value.

To be considered a valid transfer for fair market value, an annuity must:

- **be irrevocable and nonassignable;**
-
- **have, if the annuity is purchased or transacted on or after February 8, 2006, the State named as the remainder beneficiary in the first position for at least the amount of medical assistance paid on behalf of the annuitant or in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.**
-

* provide regular payments in both frequency and amount, **with no deferral and no balloon payments,** to or for the sole benefit of the individual; and,

* be actuarially sound. Scheduled payments must return at least the principal within the number of

years of expected life remaining for the individual. Life expectancy tables ~~complied~~ **compiled** from information by the Office of the **Chief** Actuary of the Social Security Administration ~~and published by the Health Care Financing Administration (HCFA)~~ for this purpose are used to determine the number of years of expected life remaining for an individual.

If based on life expectancy tables ~~complied~~ **compiled** by the Social Security Administration's Office of the Actuary and published by HCFA, the individual is not expected to live longer than the guaranteed period of the annuity, the annuity is not actuarially sound, and a transfer of assets for less than fair market value has taken place. The transfer is considered to have taken place at the time the annuity was purchased. The uncompensated value of the transfer is based on the amount projected to be paid beyond the individual's reasonable life expectancy. (See Section 0384-Resource Transfers)

Cases involving annuities are referred by field staff to the LTC Administrator for evaluation. The agency representative forwards a copy of the annuity document, including date of purchase to the LTC Administrator.

The LTC Administrator consults, as needed, with the Office of Legal Counsel, and determines:

* whether the annuity is an available or unavailable resource;

* the countable amount of the resource (i.e., the cash surrender value and/or negotiable value of the annuity); ~~and,~~

* **whether the State has been made a remainder beneficiary for at least the amount of medical assistance paid on behalf of the recipient; and**

* whether a transfer of assets for less than fair market value has occurred as well as ~~and~~ the amount of the uncompensated value and date of the transfer.

EXAMPLE 1:

Mr. Jones, age 65, **prior to February 8, 2006** purchases a $10,000 annuity. The annuity makes regular monthly payments of $100 per month over the course of 10 years. The annuity is not assignable and has no provision for cash surrender.

Because the annuity has no cash surrender or saleable value, it is not a countable resource.

The monthly payments are countable as unearned income both in the determination of MA eligibility and in the post-eligibility process.

Mr. Jones life expectancy according to the table is 14.96. Payments scheduled over his life expectancy total $17,952. ($1,200 per year x 14.96 years = $17,952). He is expected to: 1)live longer than the guaranteed payment period of 10 years; and, 2) receive payments totally at least the amount invested over that period. Thus the annuity is actuarially sound and no transfer of assets for less than fair market value has taken place.

EXAMPLE 2:

Mr. Smith, age 80, **prior to February 8, 2006** purchases the same $10,000 annuity which pays $100 per month over 10 years. However, his life expectancy is only 6.98 years. Thus a payout of just under three years is considered a transfer of assets for less than fair market value. That amount is subject to a penalty if the annuity was purchased within thirty-six months prior to the date Mr. Smith was both institutionalized and applied for MA.

EXAMPLE 3:

Mr. Fisher, age 88, **prior to February 8, 2006** purchases a $25,000 annuity six **(6)** months prior to entering a nursing facility and applying for MA. The annuity pays him $200 per month for "life." The annuity has no cash value and is not assignable. His nephew is named beneficiary and will receive a lump sum or periodic payment upon Mr. Fisher's death.

The monthly payments to Mr. Fisher are counted as unearned income both in eligibility and post-eligibility determinations.

Mr. Fisher's life expectancy according to the table is 4.34 years. Paying $2400 per year ($200/month), the annuity payments over the term of his expected life (4.34 years) total $10,416. Since the scheduled payments do not return at least the principal invested during Mr. Fisher's expected life, a transfer of assets for less than fair market value has occurred. The amount of the uncompensated value of the transfer is equal to the amount invested ($25,000) minus the amount scheduled to be paid during his expected life ($10,416). $25,000 - $10,416 = $14,584.
A transfer of assets penalty is assessed based on an uncompensated transfer of $14,584 made on the date the annuity was purchased.

EXAMPLE 4:

Mrs. Findlay, age 65, **prior to February 8, 2006** purchases a

$10,000 annuity on January 1st. Under the terms of the contract, she has the right to cancel and receive the full amount of $10,000 back within ninety (90) days of the purchase. She applies for MA on February 15th.

Because the annuity provides for a $10,000 cash surrender at the time of MA application, this amount is added to Mrs. Findlay's countable resources. Her MA application is denied.

0382.55 LIFE ESTATE

REV:07/2006

A life estate is a legal procedure giving a person certain rights in a property for his/her lifetime. Usually a life estate conveys the property to one party (the life estate holder) for life and to a second party (remainderman) when the life estate expires. The holder of the life estate agreement is entitled to all of the income produced by the property unless the life estate specifies otherwise. The agreement which creates a life estate is a will, a deed or some other legal instrument.

~~When considering a life estate it is necessary to distinguish between the physical property and the life estate.~~ The physical property has one value and the life estate has another, separate value. The value of the life estate is based on the equity value of the property and the age of the life estate holder.

The life estate holder may use the property as his home for the rest of his life, or he may rent the property or sell his interest.

A primary obligation of the life estate holder is to preserve the property in the same condition as when s/he received it so that, at his/her death, it will pass to the remainderman in much the same condition.

The remainderman has an ownership interest in the physical property but s/he cannot possess or use the property until termination of the life estate. Unless restricted by the life estate agreement, the remainderman can sell his/her interest in the property before the life estate expires.

0382.55.05 Life Estate Exclusions

REV:07/2006

A life estate in real property **located in Rhode Island that is the home of the applicant/recipient is excluded, if the equity value of the life estate is less than five hundred thousand dollars ($500,000.00), and if the individual has resided in the home for a period of at least one (1) year after the date of purchase** ~~if the property is the applicant's home~~ (and the applicant intends to return to the home) or is the primary residence of the LTC~~F~~ resident's spouse, minor child or disabled child of any age.

A life estate may be excluded if the life estate cannot be sold.

If the life estate cannot be sold, then the value is not available to the applicant and it is excluded on that basis.

The salability of the life estate must be reviewed at each redetermination.

0382.55.15 Resource Transfer

REV:07/2006

When an individual owns real estate and establishes a life estate for himself or herself in the property, the individual has transferred an asset, the remainder interest. These transfers are handled the same way as any other transfer of real property. **Please refer to the above sections regarding the requirements of life estates found at section 0384.** The value of the transfer is the remainder interest in the life estate.

The remainder interest is the equity value of the property minus the value of the life estate.

0384.05 LEGAL BASIS

REV:07/2006

The Omnibus Budget Reconciliation Act (OBRA) of 1993 provides a penalty for institutionalized individuals who on or after 8/11/93, transfer or have transferred assets for less than fair market value. Asset transfers **,prior to February 8, 2006,** are examined for potential penalty when the transfer took place within thirty six (36) months prior to or anytime after the date the individual was both institutionalized and applied for MA. **All asset transfers made on or after February 8, 2006 shall be subject to a look back period of sixty (60) months.**

Under OBRA provisions, trusts and/or portions of trusts established on or after 8/11/93 are in some cases treated as a transfer of assets and subject to a penalty. Asset transfers involving a trust are examined for potential penalty when the transfer took place within sixty (60) months prior to or anytime after the date the individual was both institutionalized and applied for MA. In the event that application of the transfer rules and the trust rules result in an individual being subject to a transfer penalty twice for actions involving the same resource, the trust rules supersede the transfer rules in determining eligibility.(See Section 0382 for detailed information about Trusts.)

The penalty is a period of RESTRICTED MA ELIGIBILITY during which payment for Long Term Care Services is denied. Long Term Care Services include nursing facility services, Intermediate Care Facility Services for the Mentally Retarded, administratively necessary days in a hospital, and home and community based waiver services.

The Medicare Catastrophic Coverage Act of 1988 provides a penalty for institutionalized individuals who transferred resources for less than fair market value prior to 8/11/93. The maximum penalty period for resources transferred for less than fair market value prior to 8/11/93 is 30 months.

0384.10 IND INELIG FOR NF PAYMENT

~~REV: 03-2006~~
REV:07/2006

Unless exempt, transfers of assets (income and resources) made for less than fair market value by an institutionalized individual (or the community spouse - if made prior to the establishment of the applicant's MA/LTC eligibility) are subject to a penalty if the transfer was made:

- o **prior to February 8, 2006** within thirty six (36) months immediately prior to or anytime after the date the individual was both institutionalized AND applied for MA; (This time period is referred to as the look-back period.) OR,

- o if the transfer involves a trust, within a sixty (60) month look back period immediately prior to or anytime after the date the individual was both institutionalized AND applied for MA.

+ O**n or after February 8, 2006 within sixty (60) months immediately prior to or at the time that the individual would have been otherwise eligible but for the prohibited transfer, whichever is later.**

If the individual has multiple periods of institutionalization and/or applications, the look back period starts with:

- **for those transfers prior to February 8, 2006,** the first date on which the individual was both institutionalized and applied for MA.
- **for those transfers on or after February 8, 2006, the first date on which the individual was both institutionalized and applied for MA or when the individual would have been otherwise eligible for medical assistance, whichever is later.**

The PENALTY is a period of INELIGIBILITY FOR PAYMENT OF LONG TERM CARE SERVICES for an otherwise eligible individual.

For calculations of penalty periods, see section 0384.20 **and 0384.25**.

For exempt transfers and exceptions to penalty periods, see section 0384.35 **and 0384.40**.

0384.15 RESOURCE TRANSFER DEFINITIONS

REV:07/2006

For purposes of evaluating transfers of assets, the following definitions apply:

- INSTITUTIONALIZED INDIVIDUAL

  An inpatient of a Nursing Facility, an inpatient of a medical institution for whom payment is based on a level of care provided in a NF, an inpatient of an ICF for the Mentally Retarded, and/or a home and community based waiver recipient.

- ASSETS

  All income and resources of the individual or the individual's spouse that would be countable in the determination of Medical Assistance eligibility for an SSI-related individual; and,

  The home (and associated land) of an institutionalized individual.

  This includes any income and resources to which the individual or his/her spouse is entitled but does not receive because of action taken by:
    * the individual or his/her spouse;
    * a person, including a court or administrative body, with legal authority to act in place of the individual or his/her spouse; or
    * any person, including any court or administrative body, acting at the direction or upon the request of the individual or his/her spouse.

- TRANSFER

  The conveyance of right, title, or interest in either real or personal property from one person to another by sale, gift, or other process.

  The gift or assignment of income from one person to another. Disposal of a lump sum payment before it can be counted as a resource can be an example of a transfer of income.

  Transfers made by an individual include transfers made by:

* the individual;
* his/her spouse;
* any person, including a court or administrative body, with legal authority to act on behalf of the individual or his/her spouse; or,
* any person, including a court or administrative body, acting at the direction or upon the request of the individual or his/her spouse.

o COMPENSATION/CONSIDERATION

All real and/or personal property (money, food, shelter, services, stocks, bonds, etc.) that is received by an applicant/recipient pursuant to a binding contract in exchange for an asset either prior to, at the time of, or after the transfer.

o FAIR MARKET VALUE (FMV)

The amount for which the property (real and personal) can be expected to sell on the open market in the geographic area involved and under existing economic conditions at the time of transfer.

o UNCOMPENSATED VALUE (UV)

The equity value (fair market value less any outstanding loans, mortgages or other encumbrances) minus the value of any compensation /consideration received by the applicant/recipient in exchange for the asset.

o LONG TERM CARE SERVICES

Services provided to individuals in Nursing Facilities, Intermediate Care Facilities for the Mentally Retarded, as an inpatient in a medical institution for whom payment is based on a level of care provided in a NF, and under Home and Community Based Waivers and Administratively Necessary Days.

o PENALTY PERIOD

The period of time during which payment for Long Term Care services is denied. The number of months in a penalty period (P) is equal to the total uncompensated value (UV) of prohibited transfers made by the institutionalized individual (or spouse if made prior to establishment of individual's MA/LTC eligibility) during the 36 **or 60** month period immediately prior to the date of institutionalization (or if later the date of MA application) divided by the average monthly cost of a private patient in a NF at the time of application. **For transfers made on or after February 8, 2006, the penalty period begins from the date of transfer or the date that the individual would have otherwise been eligible, whichever is later.**

P = UV/C

o PROHIBITED TRANSFER

Transfer of an asset for less than fair market value by an individual (or spouse if made prior to establishment of individual's MA/LTC eligibility) which was made within thirty-six (36) months ~~(~~ **or sixty (60)months** ~~for some transfers involving trusts)~~ prior to or anytime after the date the individual was both institutionalized and applied for MA.

O FOR THE SOLE BENEFIT OF

A transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or a blind or disabled individual, when the transfer is established using a written agreement that legally binds the parties and clearly expresses that the transfer is for the spouse, blind or disabled child, or blind or disabled individual only, and that no one else can benefit from the assets transferred. Without this agreement, a transfer cannot be determined to be for the sole benefit of the individual.

0384.20 PENALTY PERIOD FOR PAYMENT OF LTC SERVICES

REV:07/2006

The penalty for an otherwise eligible institutionalized individual who transfers assets for less than fair market value is a period of INELIGIBILITY FOR PAYMENT OF LONG TERM CARE SERVICES. The following provisions apply in determining the penalty period for a prohibited transfer:

o THE PENALTY PERIOD FOR A PROHIBITED TRANSFER

To calculate the penalty period (P) for a prohibited transfer, divide the amount of the uncompensated value (UV) of the transfer by the average monthly cost (C) for private payment in a nursing facility.

P =UV/C

Currently, the average monthly cost for private payment in a nursing facility is $6,826 per month.

When more than one prohibited transfer occurs during the same month, the uncompensated values of all prohibited transfers made during the month are totaled, then divided by the average monthly private payment for an individual in a nursing facility.

For transfer occurring before February 8, 2006, the ~~The~~ penalty period begins on the first day of the month in which the transfer was made and runs continuously from the penalty date regardless of whether the individual remains in or leaves the institution (or waiver program). Thus, if an individual leaves the NF, the penalty period nevertheless continues until the end of the calculated period. **For transfers occurring on or after February 8, 2006, the penalty period begins the first day of the month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance and is at an institutionalized level of care and would otherwise be eligible based upon an approved application but for the application of a penalty period, whichever is later.**

When calculating partial month penalty periods both the average monthly cost for private payment in a nursing facility which is $6,826 per month, and the average daily cost for private payment in a nursing facility which is $225.00 per day will be utilized.

Partial month penalties can be imposed. Refer to below section 0384.25.

~~Penalty periods are imposed for full months only; penalty periods of less than one month are not imposed.~~

There is no maximum length to the penalty period. However, no penalty is imposed for resources transferred more than :

- **for transfers prior to February 8, 2006,** 36 months (60 months for transfers involving trust trusts) prior to the date the individual was both institutionalized and applied for MA .
- **for transfers on or after February 8, 2006, sixty (60) months prior to the date the individual was both institutionalized and applied for MA or at the time the individual would have been otherwise eligible, whichever is later.**

EXAMPLE 1:

As a token of her love and affection, Mrs. Jones gives $12,000 to each of her ten grandchildren in January. She enters a nursing facility in March and applies for MA in December of the same year.

Since the transfers were uncompensated and were made within 36 months prior to the date of MA application **and prior to February 8, 2006** (which in this case is later than the date of institutionalization), a penalty period applies. The total uncompensated value of all prohibited transfers made in the month is $120,000.

That amount is divided by the average monthly cost of NF services, $6,826, to arrive at the length of the penalty period.

120,000/6,826 = 17.58 = 17 full months

The penalty period is eighteen (17) months.

It begins on January 1st, the first of the month in which transfer was made. It continues for a total of eighteen (17) full months.

EXAMPLE 2:

Mrs. Swanson transfers her home with a fair market value of $300,000 to her sister (who lives with her but has no equity position in the home) for no consideration on January 31, 2003.

On November 1, 2003 she enters a NF and applies for MA.

The transfer occurred **prior to February 8, 2006 and** within thirty six (36) months of the date Mrs. Swanson was both institutionalized and applied for MA, and it was made for less than fair market value. The penalty period is calculated by dividing the amount of the uncompensated transfer ($300,000) by the average monthly cost of NF services ($6,826).

$300,000/6,826 = 43.95 = 43 full months

The penalty period is forty-three (43) months.

It begins on January 1, 2003, the first of the month in which transfer was made and continues through July 30, 2006.

EXAMPLE 3:

Mr. Edwards makes an uncompensated transfer of $300,000 to his nephew on January 1, 1998. In January 2000, he is admitted to a nursing facility. On February 2, 2001 he applies for MA.

No penalty period applies. The transfer for less than fair market value was made **prior to February 8, 2006 and was** more than 36 months prior to the date of MA application.

EXAMPLE 4:

Mr. Thomas makes an uncompensated transfer of $200,000.00 to his coworker on March 1, 2006 and applies for medical assistance on July 1, 2006.

A penalty period would be applicable and that penalty period would begin on the date that Mr. Thomas would have otherwise been eligible. Mr. Thomas would have been eligible, but for the prohibited transfer, on July 1, 2006, so that is the date that the penalty period begins to run.

O MULTIPLE TRANSFERS WITH OVERLAPPING PENALTY PERIODS

When assets have been transferred in amounts and/or frequency that make the calculated penalty periods overlap, a single penalty period is imposed. This penalty period begins on the first of the month in which the first prohibited transfer was made and is calculated as follows:

FIRST, add the total of the uncompensated value of all assets transferred;

THEN, divide the sum by the average private pay cost of NF care.

THIS PRODUCES a single penalty period that begins on the first day of the month in which the first transfer was made.

EXAMPLE:

Mr. Smith transfers $14,000 in January 1999, $14,000 in February 1999 and $14,000 in March 1999, all uncompensated. In April of the same year he enters a NF and applies for MA.

Since all were uncompensated and made within 36 months prior to the date Mr. Smith was both institutionalized and applied for MA, a penalty applies for each transfer.

Calculated as separate transfers, the penalty period for the first transfer would be (14,000/6,826 = 2.05 months = 2 full months) two months, January and February. Likewise the penalty period for the second would be February and March; and for the third, March and April.

Because the penalty periods overlap when calculated separately, a single penalty period must be re-calculated by adding the uncompensated value of all three transfers ($42,000) and dividing that total by the average private pay NF cost ($6,826).

42,000/6,826 = 6.15 = 6 full months

This yields a single penalty period of six (6) months, which runs from January 1st (the first of the month in which the first prohibited transfer occurred), and continues for six (6) months, through June 30th.

O MULTIPLE TRANSFERS WITH NO OVERLAPPING PENALTY PERIODS

When multiple prohibited transfers are made in such a way that penalty periods do not overlap, each transfer is treated as a separate event with its own penalty period. Each separate penalty period is calculated by dividing the total amount of the uncompensated value of the transfer by the average monthly NF cost for a private patient.

Each separate penalty period begins on the first of the month in which transfer occurred.

EXAMPLE:

Mrs. Roland transfers $7,000 in January, $14,000 in March, and $21,000 in June, all uncompensated. She enters a NF and applies for MA on July 1st of the same year.

Since all transfers were uncompensated and made within 36 months of the date Mrs. Roland was both institutionalized and applied for MA, a penalty period applies for each transfer.

Each separate penalty period is obtained by dividing the amount of the uncompensated value (UV) of the transfer by the average monthly cost of private NF care (C). Assuming an average monthly cost of $6,826, the penalty period for the first transfer is (7,000/6,826 = 1.03 = 1) one full month. It begins on the first of the month in which transfer was made, January 1st and continues until the end of the month, January 31st. The second penalty period is two months (14,000/6,826 = 2.05 = 2), beginning on the first of March and continuing until the end of April. The third penalty period is three months (21,000/6,826 = 3.08 = 3), beginning on the first of June and continuing until the end of August.

Eligibility for payment of LTC services is denied for the months of July and August.

O TRANSFERS BY THE SPOUSE

When a transfer by the spouse results in a penalty period for the institutionalized individual, and the spouse later becomes institutionalized and applies for MA payment of long term care services, the penalty period remaining is apportioned equally between the spouses. If both spouses are institutionalized in the same month the period of ineligibility is divided equally between them. When one spouse is no longer subject to a penalty, any remaining penalty is then imposed on the remaining institutionalized individual.

O TRANSFERS OF INCOME

When lump sum income is transferred (e.g., a stock dividend check is given to another person in the month in which it is received by the individual), a penalty period is calculated based on the value of the lump sum payment and the date transfer was made.

When a stream of income has been transferred, a penalty period is calculated for each income payment that is periodically transferred.

When the right to a stream of income is transferred, a penalty period is calculated based on the total amount of income expected to be transferred during the individual's lifetime, based on life-expectancy tables established by the Social Security Administration's Office of the Actuary.

384.25 PARTIAL MONTH PENALTY

EFF: 07/2006

Rhode Island has a statewide average monthly and daily rate of private nursing facility care. The rate is set forth in section 0384.20.

In order to assess a transfer penalty period, the uncompensated transfer amount is divided by the monthly rate, and the remainder is divided by the daily rate. Individuals are responsible for paying the cost of care until their penalty period expires. Medicaid begins paying for long term care expenses on the day the penalty period expires.

EXAMPLE 1:

Mr. Burns makes an uncompensated transfer of $30,534 on April 1, 2006, the month in which he applies for Medicaid coverage of long term care services. The uncompensated transfer amount of $30,534 is divided by the average monthly rate. For discussion purposes, assume that the division equals 5.16 months. The full five (5) month penalty period runs from May 1, 2006, the month following the month of transfer, through September 2006 with a partial month penalty calculated for October 2006.

Step 1:	**$30,534**	**uncompensated transfer amount**
	Divided by $5921	**faux monthly rate**
	= 5.17	**number of moths for penalty**
Step 2:	**$5921**	**faux average monthly pay rate**
	X 5	**five month penalty period**
	=29,605	**penalty for five full months**
Step 3:	**$30,534**	**uncompensated transfer amount**
	$29,605	**penalty for five full months**
	= $929	**partial month penalty amount**
Step 4:	**$929**	**partial month penalty amount**
	$198	**faux daily rate**
	=4.69	**number of days for partial month penalty**

For October 2006, the partial month penalty of four days would be added to the five (5) month penalty period. This means that the Medicaid program would authorize payment of long-term care expenses beginning October 5, 2006.

0384.45.05 Claims of Undue Hardship

REV: 07/2006

A transfer penalty shall be waived if imposition of the penalty would cause the individual undue hardship. The entire penalty period or a portion of the penalty period shall be waived when:

1) Imposition of the penalty period would deprive the individual of medical care to the extent that his/her life or health would be endangered or would deprive the individual of food, shelter, clothing or other necessities of life; AND

2) All appropriate attempts to retrieve the transferred asset have been exhausted; AND

3) The nursing facility has notified the individual of its intent to initiate discharge or the agency providing essential services under a home and community based waiver has notified the individual of its intent to discontinue such services for reasons of non-payment; AND

4) No less costly non-institutional alternative is available to meet the individual's needs.

Undue hardship does not exist when application of the transfer provisions merely causes inconvenience or restricts lifestyle but would not put him/her at risk of serious deprivation.

When eligibility for payment of long term care services has been denied due to imposition of a transfer of assets penalty, the individual may claim undue hardship. **The facility in which the institutionalized individual is residing may file an undue hardship waiver application on behalf of the individual if done with the consent of the individual or the personal representative of the individual.** The individual **and/or facility** must submit a written request and any supporting documentation **within 30 days of a denial from DHS**. A request for consideration of undue hardship does not limit the individual's right to appeal a denial of eligibility for reasons other than hardship.

Claims of undue hardship are forwarded to the Long Term Care Administrator **or his/her designee** for evaluation. The LTC Administrator **or his/her designee** may instruct the agency representative to obtain documentation from the individual which can include but **is** not be limited to the following:

- A statement from the attorney, if one was involved;
- Verification of medical insurance coverage and statements from medical providers relative to usage not covered by said insurance;
- A statement from the transferee relative to his/her financial position;
- Resource documents such as a deed, bank book, etc. to verify the existence and structure of the ~~jointly held~~ resource;
- **If jointly held,** a ~~A~~ statement from the other owner(s) of the jointly held resource relative to the reason for and circumstances of the transfer.

The LTC Administrator **or his/her designee**, in consultation with the Office of Legal Counsel, determines whether undue hardship applies. Written notification of the Department's decision regarding undue hardship, along with appeal rights, is provided to the individual within sixty (60) days of the Department's receipt of the request.

0384.45.05.05 DRA Claims of Undue Hardship

EFF:07/2006

DHS may waive the penalty period if the transfer penalty being imposed is the direct result of an action taken on or after February 8, 2006 and before May 8, 2006, which would not have caused ineligibility prior

to that date, but resulted in ineligibility because of the changes in policy due to the federal deficit reduction act, 42 U.S.C. 1396p(e). The requestor must show that he/she (and his/her legal counsel, if applicable) was unaware of the provisions of the deficit reduction act. The process shall follow 0384.45.05.

0392.15.20 Community Spouse Allocation

REV: 07/2006

0392.15.20 Community Spouse Allocation REV:01/2006

Rhode Island is an income first state in which the income is first examined as part of the allocation. If the institutionalized individual has a community spouse, the individual ~~may wish to~~ **must** allot an amount to the community spouse for his/her support. **In order to remain eligible for Medicaid, applicants/recipients must comply with the regulation to make his/her income available to the community spouse in the post eligibility process.** The amount of the community spouse allocation is based on the income already available to the community spouse. Thus, the calculation of this allocation is preceded by a determination of the community spouse's income.

If the institutionalized individual has a community spouse and other community dependents, s/he may choose ~~to bypass~~ **in addition to** the community spouse and **can** allocate only to his/her dependents.

The maximum amount that may be taken from an institutionalized individual's income for the support of a spouse and dependents in the community is $2,488.50 per month, except:

- In the case of a court order for spousal support; or,
- In the case of a court order or a finding by an administrative hearing.

The allocation to community spouse is based upon the gross income otherwise available to the community spouse. The income of the community spouse is determined in the same manner as gross income for purposes of eligibility determination. No disregards or deductions are applied to the community spouse's gross income in determining the allocation from the institutionalized spouse.

~~If the amount made available to the community spouse by the institutionalized spouse is less than the allowed calculation, the allocation is the amount actually made available to the community spouse.~~

0392.15.30 Fair Hearing

~~REV:06/1994~~
REV:07/2006

If either the institutionalized spouse or the community spouse is dissatisfied with a determination of the community spouse monthly income allowance or the amount of income otherwise available to the community spouse, such spouse is entitled to a hearing. In addition, if either spouse establishes that due to ~~exceptional~~ **extreme rare** circumstances resulting in significant financial duress, the community spouse requires additional income, the hearing officer may order an allocation to provide such additional income as is necessary.

0392.15.35 Medical ~~Insrance~~ Insurance Premiums

REV:07/2006

The deduction is the total of premiums paid for medical insurance coverage identified on the InRHODES system STAT/INSU or STAT/MEDI panels. If the institutionalized individual's Medicare premium is being paid by the State, it is not allowed as a deduction.

0392.15.50 1st/Last Months of Instit Exp

REV:07/2006

In determining the amount of income to be protected for the needs of an institutionalized individual WITHOUT a community dependent, the fact that a patient who is institutionalized for less than a full month will have out-of-institution expenses is recognized. In fact, the likelihood is great that an individual entering an institution during the middle of the month will have already expended his/her personal income for ONGOING EXPENSES.

This deduction is the amount of extra expenses allowed during partial months of institutionalization for an individual with no community spouse or dependents. It is manually entered and maintained in the InRHODES system by the Long Term Care worker.

Evidence of an on-going expense can be either a receipt for payment or a bill that is due. An UNPAID BILL need not be for the month of admission or the month of discharge from the facility; an overdue bill is still an ongoing expense for which the individual is liable. However, a RECEIPT must be for an expense incurred for the month of admission and/or the month of discharge from the facility. (These concepts comport with the policy on spenddown.)

Copies of receipts and/or bills are inserted in the case record. **However, this section does not apple to an allocation if prohibited transfer(s) has/have occurred and caused a penalty period.**

0392.20 MA PAYMENT FOR INSTITUTIONAL CARE

REV:07/2006

An allocation for the support of the community spouse and/or dependents, and the deduction allowed for medical insurance may only be subtracted from the recipient's income ~~to the extent that the income is actually made available for the purpose intended~~ **as described in section 0392.15.20 and 0392.15.35.**

~~For example, a community spouse may be entitled to an allowance of $950, but if the institutionalized spouse only provides $700 to the community spouse in the month of January, only $700 is deducted from the institutionalized spouse's income as the spousal allowance in the post-eligibility process for January.~~

After the appropriate deductions have been subtracted from the institutionalized individual's income, the remaining balance of the income is applied to the cost of institutional care. The monthly Medical Assistance payment to the medical institution is reduced by the applied income amount. Following the previously cited example (Sec.0392.15.25), set forth below are the final calculations of the amount the recipient is responsible to pay toward the cost of care in the institution.

ROSTENKOWSKI EXAMPLE:

Mr. Rostenkowski's Income	$2,327.00
Personal Needs Allowance	- 50.00
Spousal Allocation	-1,313.00
Dependent's Allowance	- 864.00
Medicare Premium	- 66.60
Income Applied to the Cost of Institutional Care	$ 33.40

0392.30 SPECIAL SITUATIONS

~~REV:01/2002~~
REV:07/2006

Some situations produce unusual results in the three-step sequence of financial determinations, especially in months in which the recipient is Medical Assistance-eligible for only a partial month, or in those circumstances in which the individual is Medical Assistance-eligible based on a flexible-test income calculation which includes projected institutional care expenses.

Example A:

Step 1. Mrs. Stark, widowed with no dependents, has been institutionalized since 1985. She has exhausted her resources paying for nursing facility care, and is resource eligible. She has gross income of $4,870 per month. After the $20.00 disregard, her countable income is $4,850/monthly, leaving her with a monthly income of $3,208.33 in excess of the Medically Needy Income limit ($4,850 - $641.67 = $3,208.33). After deduction of allowable medical insurance premiums (SMI), her flex-test spenddown liability is $3,154.33 per month ($3,208.33 - $54 = $3,154.33). The private pay rate in the nursing facility is $175 per day ($5,250/mo). The projected institutional expense of $5,250 exceeds the spenddown liability, therefore Mrs. Stark is ELIGIBLE for Medical Assistance for the full month. Proceed to step 2 to evaluate eligibility for a vendor payment.

Step 2. She has not transferred any resources that would preclude Medical Assistance payment for the nursing facility services. Proceed to step 3.

Step 3. The post-eligibility treatment of income results in no vendor payment being made to the facility. From her gross income of $4,870, Mrs. Stark is allowed to protect $50 for personal needs, and $54 for her SMI premium. Her income applied to the cost of nursing facility care is $4,766 per month ($4,870 - $50 - $54 = $4,706). The Medical Assistance per diem rate for the facility in which Mrs. Stark resides is $120.00 per day ($3,600/mo.). Her applied income exceeds the Medical Assistance rate for care in the facility, and thus no vendor payment can be made to the nursing facility.

Example B:

Step 1. Mr. Bradley is an institutionalized individual with a spouse and two minor children in the community. He has gross income of $5,400 per month, comprised of a $900 monthly RSDI benefit, and a $4,500 private pension. His countable income for Medical Assistance eligibility determination purposes is $5,380. His income in excess of the Medically Needy income limit is $4,738.33 ($5,380 - 641.67 = $4,738.33). His spenddown liability is $4,684.33 ($4,738.33 - $54 {SMI} = $4,684.33). He has no other incurred medical expenses. The private cost of care in the institution in which he is placed is $140 per day ($4200/mo).

Because his projected institutional care costs combined with his incurred medical expenses do not absorb his excess income, he is not eligible for Medical Assistance. Because he is not eligible for Medical Assistance, there is no post-eligibility were eligible for Medical Assistance, the post-eligibility process would have provided for an allowance for his spouse and dependent children. Because he is not eligible for Medical Assistance, the post-eligibility treatment of income never comes into play. There is no equivalent spouse/dependent allowance methodology in the eligibility determination process.

Example C:

Step 1. Mr. Dingell is an institutionalized individual with a community spouse who lives in a subsidized apartment for the elderly. Mr. Dingell's resources consist only of his Personal Needs Account of $145.00 at the nursing facility. His income consists solely of a gross RSDI benefit of $996.00. The income of the community spouse consists solely of her gross RSDI benefit of $560.00 per month. Mr. Dingell is Categorically Needy by virtue of having resources and income less than the Categorically Needy limits for an institutionalized individual. Proceed to Step 2.

Step 2. Mr. Dingell has not transferred any resources, and thus has incurred no penalty period for nursing facility payment. Proceed to step 3.

Step 3. The post eligibility process results in zero income being applied to the cost of care. The amount allocated to Mrs. Dingell from Mr. Dingell's income is $892/mo. ($1452.00 - 560.00 = $892.00. There is no excess shelter allowance because Mrs. Dingell pays no utility expenses, and her total shelter cost in subsidized housing amounts to a monthly rental payment of $161). From Mr. Dingell's gross income of $996.00 is deducted the personal needs deduction of $50.00, then the spousal allocation of $892.00, then the SMI Premium of $54.00, leaving nothing to be applied to the cost of care in the nursing facility.

Example D:

Mrs. Bentson is an institutionalized individual with a community spouse. She entered a Nursing Facility from her home on the 11th of the month. She has resources between the Categorically Needy and Medically Needy limits, and has income from RSDI benefits of $1051.00 gross per month. Her community spouse is 59 years old, has no RSDI, but collects TDI of $581 monthly. He has shelter costs of $225/month for rent, which includes heat and utilities. Mrs. Bentson has Medicare Part A coverage and Medicare is to pay for her first 20 days in the nursing facility.

Step 1. Mrs. Bentson has countable income of $1031.00 per month, and an excess income of $389.33. After deduction of her monthly SMI premium of $54.00, her spenddown liability is $335.33. ~~Because Medicare pays for her care in the Nursing Facility for the remainder of the month, she has no cost of institutional care, and is not eligible for Medical Assistance based on projected institutional care costs.~~ During the second week of the month, she incurs expenses for prescriptions of $122. Her spenddown liability decreases to $213.33. She has no further medical expenses that month, and never becomes eligible for Medical Assistance during the month. **Because Medicare pays for her care in the Nursing Facility for the remainder of the month, she has no cost of institutional care, and is not eligible for Medical Assistance based on projected institutional care costs.**

There is no post-eligibility treatment of income for that month, and no income specifically allocated to the support of Mr. Bentson in the month. Since she has no obligation to pay for any services other than her prescriptions **and Medicare Part D**, she may choose to make funds available to her spouse.

EXAMPLE E:

During the second FULL month of Mrs. Bentson's institutionalization, she incurs the cost of her Nursing Facility care and her spenddown liability for the month is met. Her projected institutional expenses render her eligible for Medical Assistance for the full month. She is certified for Medical Assistance from the first day of the month. In the post-eligibility process, she retains $50 for Personal Needs, an allocation to support Mr. Bentson of $871, and an amount to pay her Medicare premium of $54. Her contribution to the cost of her care is $56.